

PL-11

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10,703

FILE: B-193377

DATE: July 10, 1979

MATTER OF: Gamm Contracting Company

DLG 02100

[Protest of Bid Rejection And Cancellation of Invitation]
DIGEST:

Where statute (33 U.S.C. § 624) precludes award to bidder whose price is more than 25 percent in excess of agency estimate, rejection of all bids and cancellation of invitation was proper since protester's low bid was substantially more than 25 percent above agency estimate that had been revised extensively in response to protester's allegations of error and revised estimate has not been shown to be unreasonable.

A Contracting Co.

Gamm Contracting Company (Gamm) protests the rejection of all bids by the Army Corps of Engineers under invitation for bids No. DACW 17-78-B-0069 for the enlargement of the Widner Eight Foot Project, at Moore Haven Lock on the Okeechobee Waterway - a river and harbor improvement project located in Florida. All bids were rejected as required by 33 U.S.C. § 624 (1976) for being more than 25 percent in excess of the Government estimate. Consequently, the invitation was canceled and bidders were advised that the work covered by the invitation would be included with other work to be advertised at a later date.

Gamm, whose bid of \$113,000 was the lowest of bids ranging upward to \$225,100, contends that the Government estimate of \$64,960 was unreasonably low.

Gamm provided no specifics with its initial allegation. As a result, the Corps reviewed its estimate and found it reasonable and justified except for the omission of a four percent sales tax on the material to be purchased for the construction work. The Corps estimated that the omission amounted to only

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\$400.00, leaving the revised estimate far below the minimum amount necessary to bring Gamm's bid within the 25 percent statutory limitation.

Upon being furnished with a detailed breakdown of the Corps' estimate, Gamm supplemented its protest by taking exception to various of the Corps' calculations under each of the four items of the bidding schedule: (1) mobilization and demobilization, (2) excavation, (3) plastic filter cloth, and (4) rip rap stone.

Briefly, Gamm alleges that the Corps' estimate of three days for mobilization and demobilization is unrealistic and should be increased to 10 days; that no funds are assigned in the Corps' estimate for labor involved in loading, transporting and unloading the transport vehicles; and that the Corps' estimate "fails to allow sufficient cartage." Under the second item, excavation, Gamm contends the Government unrealistically assumes a production rate of 880 cubic yards a day whereas a more reasonable rate of 600 cubic yards per day is mandated because water saturated soil must be removed. At such a rate, Gamm argues that the excavation will reasonably take 43 days rather than the 33 days estimated by the Corps; Gamm further argues that the estimated \$2,000 for environmental protection fails to include labor costs of at least an additional \$2,000. Concerning the third item, plastic filter cloth, Gamm alleges that an extra 10 percent is required for lapping and wastage, and that a four percent sales tax, labor costs, insurance rate, and a 13 percent overhead charge were omitted. Further, Gamm charges that the Corps' estimate for rip rap stone, which is computed in cubic yards, is erroneously predicated upon an assumption that one cubic yard of stone consists of approximately one ton of the material whereas a cubic yard actually consists of approximately two tons. Moreover, the Corps' estimate allegedly allows insufficient time for this item as well as insufficient labor for salvaging the stone and stockpiling the rip rap materials.

In this regard, Gamm points out that the total time in the Government's estimate for completing the

entire project is 56 calendar days, which constitutes but 37 percent of the 150 days allowed by the contract for performance of the effort. Gamm contends that this further buttresses its arguments that the total time allotted by the government estimate has been understated. In sum, Gamm computes a reasonable cost to be \$111,326.31, thereby bringing its bid price well within the 25 percent statutory limitation.

The Corps has furnished a detailed response to each of these allegations. It remains unconvinced that ten days are required for mobilization and demobilization. The Corps does, however, concur that certain costs pertaining to the movement of empty lowboy transports were omitted, and that its estimate failed to account for assembly and disassembly of the dragline, resulting in an additional \$1,276. The Corps remains adamant that its estimated costs include adequate labor for transportation and time for cartage of equipment.

As for excavation, the Corps rejects the argument that 880 cubic yards per day is an unreasonable figure, and contends that the estimate does account for removal of water saturated material. It further advises that about 40 percent of the material to be excavated lies above the mean low water line. The agency contends that its 880 cubic yards per day rate represents its best judgment in terms of job requirements and it will not alter this assessment unless it is shown to be absolutely unsupportable. The Corps rejects Gamm's contention that environmental protection costs should be increased by \$2,000, taking exception to Gamm's premise that a silt barrier is required. However, after reviewing its estimate, the Corps concludes that its 16.67 percent overtime factor was predicated upon a 6-10 hour per day workweek, while a 10 percent overtime factor should have been used since that percentage was applicable to the 5-10 hour per day workweek set out in the plan of operation. Accordingly, the Corps lowered the overtime factor to 850, and its estimate for this portion of the item to \$11,958.

The Corps agrees with Gamm's allegation that the plastic filter cloth estimate should be increased by \$2,151.41.

The Corps does not agree that one cubic yard of rip rap stone weighs approximately two tons, but has revised its estimate based upon the particular type of stone quarried in Southwest Florida, concluding that such stone requires a 1.3 (as opposed to 1.0) ton factor per cubic yard, and that the estimate should be increased by 30 percent to \$8,315. The Corps further agrees its estimate fails to provide for removal and stockpiling of existing stone in the project area, and that insufficient time has been allowed for stone placement as well as removal and stockpiling. Accordingly, an additional \$1,337 for equipment time and an increase of \$1,367 for labor is required, with sales tax and overhead markup increasing the estimated cost to \$15,654 or \$30.10 per cubic yard.

With respect to the discrepancy between the completion time contained in the Government estimate and the time allotted in the solicitation for contract performance, the Corps explains that the performance time set out in its solicitation was "an outside ball park figure" which was intended to be construed by bidders "merely as a loose guideline." In this case, the Corps believed that the project could be completed within three months, but added another two months to cover mobilization time and to provide a "safety cushion" for weather hazards and other delays.

In completing the actual Government estimate, however, the Corps made an in-depth study of the project as opposed to the preliminary review conducted which resulted in the solicitation's stated completion time. The Corps also reports that the Government estimate does not include either the 30 day leeway period allowed for commencing performance or the project establishment time (e.g. establishing the growth of grass as opposed to merely planting the grass seed). The Corps sees the Government estimate as reflecting a reasonable time for actual contract performance while it views the solicitation completion time is a generous figure which includes a margin for error and other contingencies.

In summary, the Corps' review of Gamm's specific contentions has resulted in a net upward adjustment of

the Government estimate to \$72,958. Since Gamm's bid price exceeds \$91,198, which is 25 percent more than the revised estimate, the bid, in the Corps' view, remains ineligible for award.

We find no basis for disagreeing with the Corps. The fact that all responsive bids are substantially higher than the Government estimate does not, by itself, establish the reasonableness of bidders' prices and the unreasonableness of the Government's estimate. Otherwise, a Government estimate could be invalidated whenever a bidder's price is not in line with the estimate merely by the submission of a possible hypothesis which might explain its higher bid. See Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160; General Elevator Company, Inc., B-190605, June 12, 1978, 78-1 CPD 426, and citations therein. However, where such circumstances do occur, an agency should be on notice of a possible error in its estimate and should carefully review the estimate. General Elevator Company, Inc., *supra*; W.G. Construction Corporation, B-188837, August 9, 1977, 77-2 CPD 100.

Here, the Corps has done that and finds that the low bid still exceeded the awardable range prescribed by 33 U.S.C. § 624. Our review is to determine whether the estimate, as revised, is reasonable. See OKC Dredging Inc., B-189507, January 18, 1978, 78-1 CPD 44; Durocher Dock and Dredge, Inc., B-189704, March 29, 1978, 78-1 CPD 241.

The record before us contained a detailed breakdown of the Corps' original estimate, showing labor, materials, overhead, tax, etc., and the Corps' revisions to the original estimate. Although Gamm objected to several portions of the Corps' final estimate, the Corps has also provided a reasonable explanation in support of its revised estimate, and Gamm has not affirmatively shown that its data, calculations and proposed estimate are correct while those of the Corps are incorrect. Durocher Dock & Dredge, Inc., *supra*. Thus, on this record we cannot find the Corps' position and revised estimate to be unreasonable and therefore we cannot conclude that the Corps' decision to reject all bids was improper.

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The protest is denied.

R. Z. Kellum
Deputy Comptroller General
of the United States